

VIA ECF

July 8, 2022

Hon. Nicholas G. Garaufis
United States District Court
Eastern District of New York
1350 Broadway
New York, NY 10018

**RE: Josie Maran Cosmetics, LLC v. Shefa Group, LLC dba Morning Beauty,
No. 1:20-cv-03702-NGG-CLP (E.D.N.Y.)
Plaintiff's Response to Defendant's Notice of Supplemental Authority**

Dear Judge Garaufis:

We are counsel to Plaintiff Josie Maran Cosmetics, LLC ("**JMC**"). The purpose of this letter is to briefly address the applicability of the supplemental authority offered by Defendant Shefa Group, LLC dba Morning Beauty ("**Morning Beauty**") in its Notice of Supplemental Authority (ECF # 37). Morning Beauty is correct when it asserts that JMC cited *Global I*¹ in support of JMC's Motion to Dismiss Morning Beauty's Counterclaims (ECF # 29), and that *Global I* was reversed by the Second Circuit in *Global II*². Crucially, however, Morning Beauty ignores – and hopes the Court will ignore – stark factual differences which directly informed the core of the *Global II* Court's reasoning, and which undermine or outright proscribe the application of *Global II* to the present case.

Specifically, unlike the prevailing party in *Global II*, Morning Beauty does not allege that its contractual relationship with Amazon was terminated. Instead, Morning Beauty can only allege that its listings for specific JMC products was temporarily suspended. *Compare Global I*, 2022 U.S. App. LEXIS 7108, at *6 ("Global Supplies does not allege that it suffered some generalized

¹ *Global Supplies NY, Inc. v. Electrolux Home Prods.*, No. 19-CV-4823 (LDH) (CLP), 2021 U.S. Dist. LEXIS 55221, 2021 WL 1108636 (E.D.N.Y., Mar. 23, 2021).

² *Global Supplies NY, Inc. v. Electrolux Home Prods.*, No. 21-674, 2022 U.S. App. LEXIS 7108, 2022 WL 815795 (2d Cir. Mar. 18, 2022).

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reputational harm as a result of Electrolux's false complaint, or that the defendants' complaints merely harmed its ability to form business relationships with Amazon Rather, Electrolux's complaint had the specific effect of causing Amazon to terminate its business relationship with Global Supplies.") *with* ECF # 22 at ¶124 ("Shefa was damaged by suspension of these listings by losing revenue related to Josie Maran Products."). But Morning Beauty never alleged that it had a distinct contract to sell Josie Maran Products.

Moreover, unlike the prevailing party in *Global II*, Morning Beauty does not allege that JMC failed to retract its infringement reports. *Compare Global II*, 2022 U.S. App. LEXIS 7108, at *5-6 ("Global Supplies alleges, for example, that Electrolux made a knowingly false intellectual property complaint to Amazon and refused to retract the claim when requested by Global Supplies. See AC ¶ 63 (pleading that its 'entire loss would have been avoided had Defendants . . . simply emailed a one-sentence retraction of their unlawful IP Complaints'") *with* ECF # 22 at ¶¶ 55-56 (acknowledging that JMC retracted the reports within 1 day of Morning Beauty's request). Here, that loss was avoided because JMC did issue the requested retraction.

Additionally, unlike the patent infringement at issue in *Global II*, this case involved a trademark report, which courts acknowledge is less likely to trigger consequences than a patent report. *See, e.g., NOCO Co. v. OJCommerce LLC*, 2021 U.S. Dist. LEXIS 85700, at *5-6 (N.D. Ohio May 5, 2021), *aff'd by NOCO Co. v. OJ Commerce, LLC*, 2022 U.S. App. LEXIS 13674 (6th Cir. May 20, 2022) (finding that the "patent claim more likely impacted Amazon's decision").

All told, then, *Global II* involves a different impact on a different type of relationship caused by different activities, and its holding is inapplicable to the case at bar.

Sincerely,

ALEX E. JONES

Partner | KJK

cc: All counsel of record (via ECF)

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